

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:11-cv-593-FDW  
(3:05-cr-298-FDW-CH-1)**

<b>DAMEON LAMONT DUNLAP,</b>	)	
	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>vs.</b>	)	<b><u>ORDER</u></b>
	)	
<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Respondent.</b>	)	
_____	)	

**THIS MATTER** comes before the Court on a Motion for Reconsideration of the Court’s prior Order denying and dismissing Petitioner’s Motion to Vacate filed pursuant to 28 U.S.C. § 2255, (Doc. No. 11). For the reasons that follow, the Court will deny the Motion for Reconsideration.

Petitioner filed the pending Motion for Reconsideration on June 21, 2013, seeking review of the Court’s prior Order dismissing Petitioner’s Motion to Vacate with regard to his conviction and sentence in Criminal Case No. 3:05cr298. In the Motion to Vacate, filed on November 17, 2011, Petitioner alleged that his prior convictions were not predicate felonies supporting the Government’s § 851 Notice and his designation as a career offender under United States v. Simmons, 649 F.3d 243 (4th Cir. 2011). On March 12, 2013, the Court denied the motion and dismissed the petition as time-barred.

In Petitioner’s Motion for Reconsideration, filed on June 21, 2013, Petitioner asks the Court to hold his motion to vacate “in abeyance” pending a decision by the Fourth Circuit Court of Appeals in United States v. Miller, No. 13-6254 (4th Cir.). Petitioner also seeks

reconsideration based on the Supreme Court's decision in Alleyne v. United States, No. 11-9873, 2013 WL 3155221 (June 24, 2013).

Petitioner's Motion for Reconsideration is denied. Because the Court has already dismissed Petitioner's § 2255 petition on the merits, the case is no longer "pending" such that it could be "stayed" pending the Fourth Circuit's decision in Miller. Furthermore, to the extent that the Motion for Reconsideration is a "second or successive" motion under § 2255, Petitioner has not shown that he has obtained the permission of the United States Court of Appeals for the Fourth Circuit to file the petition. See § 2255(h) ("A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals."); see also Everette v. United States, No. 5:04cv358, 2012 WL 4486107, at \*2-3 (E.D.N.C. Sept. 28, 2012) (dismissing a motion for reconsideration as a successive, unauthorized § 2255 petition).

In sum, for the reasons stated herein, Petitioner's Motion for Reconsideration is denied.

**IT IS, THEREFORE, ORDERED** that

1. Petitioner's Motion for Reconsideration, (Doc. No. 11), is **DENIED**.
2. **IT IS FURTHER ORDERED** that pursuant to Rule 11(a) of the Rules Governing Section 2254 and Section 2255 Cases, this Court declines to issue a certificate of appealability. See 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 338 (2003) (in order to satisfy § 2253(c), a petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong); Slack v. McDaniel, 529 U.S. 473, 484 (2000) (when relief is denied on procedural grounds, a petitioner must establish both that the dispositive procedural ruling is debatable and that the petition states a debatable claim of the denial of a constitutional right).

Signed: June 27, 2013

A handwritten signature in cursive script, reading "Frank D. Whitney", written over a horizontal line.

Frank D. Whitney  
Chief United States District Judge

